

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 23 1997

In the Matter of)
)
Request of Limited Modification of)
LATA Boundaries to Provide ELCS)
Between the Bogata)
Exchange and the Mount Pleasant)
Exchange.)

96-159

PETITION

DOCKET FILE COPY ORIGINAL

I. INTRODUCTION

Southwestern Bell Telephone Company (SWBT), pursuant to Section 3(25) of the Communications Act of 1934, as amended,¹ and in accordance with the guidelines established in the Commission's Memorandum Opinion and Order (MO&O) released July 15, 1997 in CC Docket No. 96-159,² hereby makes application for a limited modification of LATA boundaries to provide ELCS between the Bogata exchange and the Mount Pleasant exchange.

II. SUPPORTING INFORMATION

As prescribed in paragraph 23 of the aforementioned Commission MO&O, SWBT provides the following information in support of its application:

1. Type of service: Flat-rate, non-optional Expanded Local Calling (ELC);
2. Direction of service: Two-way;

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¹ The Communications Act of 1934, as amended, 47 U.S.C. *et al.*

² Memorandum Opinion and Order, Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service at Various Locations, CC Docket No. 96-159, released July 15, 1997. By way of this MO&O the Commission adopted a format for and criteria under which such petitions would be granted. The format and criteria are detailed in paragraphs 23 and 24.

3. Exchanges involved: Bogata in the Dallas, TX LATA and Mount Pleasant in the Longview, TX LATA;
4. Name of carriers: Bogata of Contel/GTE Southwest, Inc. and Mount Pleasant of Southwestern Bell Telephone;
5. State commission approval(s): See Attachment A;
6. Number of access lines or customers: The Bogata exchange has 1,549 access lines, and the Mount Pleasant exchange has 1,194 access lines;
7. Usage data: Usage data is not available to Southwestern Bell Telephone. SWBT does not currently carry traffic across LATA boundaries;
8. Poll results: Percentage of Bogata customers returning ballots who voted in favor of ELC to Mount Pleasant: 88.50. Where SWBT is the petitioning exchange, there is no proposed rate increase. Where SWBT is not the petitioning exchange, SWBT does not have information as to any proposed rate increase.
9. Community of interest statement: The Public Utility Commission of Texas includes a Community of Interest Finding in their Order(s). See Attachment A.
10. Map: See Attachment B; and,
11. Other pertinent information: None

III. PRIMA FACIE SHOWING

SWBT believes that it has made a *prima facie* case supporting grant of the proposed modification because the instant ELCS petition (1) has been approved by the state commission; (2) proposes only traditional local service (i.e., flat-rate, non-optional ELCS); (3) indicates that the state commission found a sufficient community of interest to warrant such service; (4) documents this community of interest through such evidence as poll results and descriptions of the communities involved; and, (5) involves a limited number of customers or access lines. These requirements for a *prima facie* case are detailed in the aforementioned Commission MO&O paragraph 24.

IV. CONCLUSION

Wherefore, SWBT request that the Commission approve its application for a limited modification of LATA boundaries to provide ELCS between the Bogata exchange and the Mount Pleasant exchange.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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AUGUST 29, 1997

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
 CALLING SERVICE FROM THE JARRELL §
 EXCHANGE TO THE EXCHANGE OF § OF TEXAS SHEET 1
 BARTLETT §

ORDER NO. 9

DOCKET NO. 13435

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
 CALLING SERVICE FROM THE ALBA §
 EXCHANGE TO THE EXCHANGE OF § OF TEXAS
 MINEOLA §

ORDER NO. 8

DOCKET NO. 13486

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
 CALLING SERVICE FROM THE BOGATA §
 EXCHANGE TO THE EXCHANGE OF § OF TEXAS
 MT. PLEASANT §

ORDER NO. 9

DOCKET NO. 13498

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
 CALING SERVICE FROM THE §
 BROWNSBORO-EDOM EXCHANGE TO THE § OF TEXAS
 EXCHANGES OF LINDALE, MINEOLA, §
 OWENTOWN AND TYLER §

ORDER NO. 10

DOCKET NO. 13556

PETITION FOR EXPANDED LOCAL § PUBLIC UTILITY COMMISSION
 CALLING SERVICE FROM THE CHESTER §
 EXCHANGE TO THE EXCHANGE OF § STATE OF TEXAS
 WOODVILLE §

ORDER NO. 7

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 PUBLIC UTILITY COMMISSION

DOCKET NO. 13324
DOCKET NO. 13435
DOCKET NO. 13486
DOCKET NO. 13498
DOCKET NO. 13556
DOCKET NO. 13649

ORDER NO. 9
ORDER NO. 8
ORDER NO. 9
ORDER NO. 10
ORDER NO. 7
ORDER NO. 10

ATTACHMENT A
SHEET 2

DOCKET NO. 13649

PETITION FOR EXPANDED LOCAL	§	PUBLIC UTILITY COMMISSION
CALLING SERVICE FROM THE FROST	§	
EXCHANGE TO THE EXCHANGE OF	§	OF TEXAS
HILLSBORO	§	

**ORDER NO. 10
UNABATING AND DIRECTING LOCAL EXCHANGE COMPANY
TO FILE FOR LIMITED MODIFICATION**

On July 28, 1997, the Commission Staff recommended that, in light of the recent Federal Communications Commission (FCC) order addressing the procedures for Southwestern Bell Telephone Company (SWBT) to request limited modifications of local access and transport area (LATA) boundaries for the provision of expanded local calling service (ELCS), that these applications be unabated. A community of interest has previously been established in these cases and a waiver request was filed by SWBT with the Department of Justice under the *Modified Final Judgment*. Therefore, these applications are unabated.

Within thirty days of the effective date of this order, SWBT shall file a request for limited modification of the LATA boundary in accordance with the procedures outlined *In the Matter of Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, CC Docket No. 96-159, FCC 97-244, (rel. July 15, 1997) *Memorandum Opinion and Order*, §§ 23 & 24.

DOCKET NO. 13324
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DOCKET NO. 13486
DOCKET NO. 13498
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ORDER NO. 9
ORDER NO. 10
ORDER NO. 7
ORDER NO. 10

ATTACHMENT A
SHEET 3

Additionally, within 10 days of the receipt of orders or notices from the FCC relating to these petitions, SWBT shall file such orders or notices with the Commission.



**ISSUED BY THE OFFICE OF POLICY DEVELOPMENT
ON BEHALF OF THE PUBLIC UTILITY COMMISSION OF TEXAS
ON THE 30th DAY OF JULY, 1997**

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SWB

DOCKET NO. 13486

PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
BOGATA EXCHANGE TO THE
WINNSBORO, WINFIELD,
CLARKSVILLE, MT. VERNON, TALCO,
AND MT. PLEASANT EXCHANGES

§
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PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER NO. 8
ORDER OF SEVERANCE

PROJECT NO. 15152

PETITION FOR EXPANDED LOCAL
CALLING SERVICE FROM THE
BOGATA EXCHANGE TO THE
WINNSBORO, WINFIELD,
CLARKSVILLE, MT. VERNON,
AND TALCO EXCHANGES

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ORDER NO. 1
ESTABLISHING PROJECT AND PROCEDURAL SCHEDULE

On April 25, 1994, a petition for expanded local calling service (ELCS) from the Bogata Exchange to the Winnsboro, Winfield, Clarksville, Mt. Vernon, Talco, and Mt. Pleasant Exchanges was filed pursuant to P.U.C. SUBST. R. 23.49(c). The petition was assigned Project No. 13486. The Bogata Exchange is in the Dallas Local Access and Transport Area (LATA) and the Winnsboro, Winfield, Clarksville, Mt. Vernon, Talco, and Mt. Pleasant Exchanges are in the Longview LATA. Federal court orders prohibit Southwestern Bell Telephone Company (SWB) and GTE Southwest, Inc. (GTE) from providing service across the LATA boundary. Consequently, on September 29, 1994, Order No. 1 docketed this petition so that the Commission could formally process the interLATA petition and issue an interim order to allow SWB and GTE to seek waivers from Judge Harold H. Greene.

On September 25, 1995, an interim order of the Commission became effective. The interim order found that a community of interest exists between the exchanges and directed GTE and SWB to seek a waiver from Judge Greene. On November 22, 1995, Judge Greene issued an order that permits

DOCKET NO. 13486
PROJECT NO. 15152

ORDER NO. 8

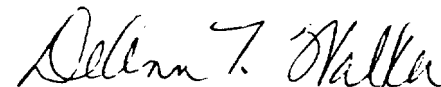
ATTACHMENT A
SHEET 5

GTE and Contel to carry traffic between the exchanges. Judge Greene has not yet ruled on SWB's request.

In order to process the portion of this petition that has been granted a waiver, the request for ELCS from the Bogata Exchange to the Van Exchange is severed from Docket No. 13486. It shall be processed as Project No. 15152 captioned *Petition for Expanded Local Calling Service from the Bogata Exchange to the Winnsboro, Winfield, Clarksville, Mt. Vernon, and Talco Exchanges*. The attached procedural schedule establishes the relevant deadlines for this project.

SIGNED AT AUSTIN, TEXAS the 21st day of December, 1995.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

3. Judge Harold H. Greene established the LATA boundaries for Southwestern Bell Telephone Company (SWB) in the Modified Final Judgment, *United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982) and *United States v. Western Elec. Co., Inc.*, 569 F.Supp. 990 (D.D.C. 1983), and for GTE Southwest, Inc. and Contel of Texas, Inc. (collectively GTE) in the Decree, *United States v. GTE Corp.*, 1985-1 Trade Cas (CCH) §66,355 (D.D.C. 1985). (The collective orders of Judge Greene will hereinafter be referred to as MFJ.)

4. A LATA is a geographic area in which SWB and GTE can provide telecommunication services within its boundaries. In the MFJ, Judge Greene restricted the two local exchange carriers from providing interLATA transport. In order for the companies to span the LATA boundaries established by the MFJ, they must obtain a waiver from Judge Greene.

5. Judge Greene has relied upon the following issues for SWB or GTE to obtain a waiver of the MFJ: impact on competition; whether the calling plan has the attributes of a long distance toll call; and whether a community of interest exists between the two exchanges.

6. On October 19, 1993, the Commission amended P.U.C. SUBST. R. 23.49 by adding a section pertaining to ELCS in accordance with Senate Bill 632, (Act of May 11, 1993, 73rd Leg. R.S., ch.271, 1993 Tex. Sess. Law Serv. 1276 (Vernon))(to be codified as an amendment to TEX. REV. CIV. STAT. ANN., Art. 1446c, § 93A) and § 93A of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1994). The rule became effective on December 7, 1993.

7. The statute and the rule referred to in Finding of Fact No. 6 provide certain requirements for petitioning exchanges to meet in order to receive ELCS. One such requirement is a showing of a community of interest.

8. In recommending approval of various waivers before Judge Greene, the Department of Justice (DOJ) has relied upon an affirmative finding of the Public Utility Commission of Texas that a community of interest exists, often based on a vote of the responding subscribers and whether the two exchanges share such needs as local governments, employment, shopping, and use of educational and medical services.

9. The Commission contemplated interLATA waivers in adopting P.U.C. SUBST. R. 23.49(c); thus, it was aware of issues relating to the implications of an interLATA boundary application when adopting the rule.

10. An affirmative vote of 70 percent of the subscribers responding to the ballot is necessary for an ELCS petition to proceed at the Commission. The percentage of affirmative votes from those

subscribers returning ballots is a compelling showing of a community of interest. This factor can and should be considered with the same weight as other factors, such as the sharing of local government, schools, employment, and commercial centers.

11. On April 25, 1994, the Bogata Exchange filed a petition for ELCS between it and various exchanges, including the Winnsboro, Winfield, Clarksville, Mt. Vernon, Talco, and Mt. Pleasant Exchanges.

12. On August 3, 1995, Order No. 6 was issued in this proceeding. The order found that sufficient evidence was not presented to show a community of interest exists between the Bogata Exchange and the Winnsboro, Winfield, and Mt. Vernon Exchanges. On August 10, 1995, the petitioning Exchange filed additional evidence and requested reconsideration of Order No. 6. After consideration of all evidence, Order No. 6 is withdrawn.

13. The Bogata Exchange is served by Contel, and it is in the Dallas LATA. The Clarksville, Winnsboro, Winfield, Mt. Vernon, and Talco Exchanges are served by GTE, and are in the Longview LATA. The Mt. Pleasant Exchange is served by SWB, and is in the Longview LATA.

14. The parties to the proceeding were the petitioning Bogata Exchange, GTE, Contel, SWB, and General Counsel. A hearing on the merits was not held because there are no contested issues. There is no statutory deadline for this proceeding.

15. The Bogata Exchange is contiguous with the Clarksville, Talco, Mt. Vernon, and Mt. Pleasant Exchanges, and it is within 22 miles of the Winnsboro and Winfield Exchanges.

16. An affirmative vote of 88.7 percent of those subscribers that voted in the balloting favored expanding local calling scope of the Bogata Exchange to the Clarksville Exchange. An affirmative vote of 85.6 percent of those subscribers that voted in the balloting favored expanding local calling scope of the Bogata Exchange to the Talco Exchange. An affirmative vote of 88.5 percent of those subscribers that voted in the balloting favored expanding local calling scope of the Bogata Exchange to the Mt. Pleasant Exchange. An affirmative vote of 78.1 percent of those subscribers that voted in the balloting

avored expanding local calling scope of the Bogata Exchange to the Winnsboro Exchange. An affirmative vote of 78.9 percent of those subscribers that voted in the balloting favored expanding local calling scope of the Bogata Exchange to the Winfield Exchange. An affirmative vote of 84.5 percent of those subscribers that voted in the balloting favored expanding local calling scope of the Bogata Exchange to the Mt. Vernon Exchange.

17. The Bogata Exchange is located within two counties, the Red River County and the Franklin County. The town of Clarksville is the county seat for those citizens in the Red River County portion of the Bogata Exchange. The town of Clarksville is located approximately 16 miles from the town of Bogata. The two exchanges are contiguous. The Clarksville Exchange provides the 911 services, emergency medical services, and police services for those residents in the Red River County portion of the Bogata Exchange. The Red River General Hospital is located in Clarksville, and is used by citizens in the Red River County portion of the Bogata Exchange. In addition, the Clarksville Church of Christ serves people within the Bogata Exchange. Citizens in the Bogata Exchange use local doctors, nurses, X-ray and mammography technicians, banking institutions, major businesses, nursing homes, places for employment, schools, library, firefighters, churches, and merchants in the Clarksville Exchange.

18. The town of Mt. Vernon is the county seat for those citizens in the Franklin County portion of the Bogata Exchange. The two exchanges are contiguous. The Mt. Vernon Exchange provides the 911 services, emergency medical services, and police services for those residents in the Franklin County portion of the Bogata Exchange. The local hospital, East Texas Medical Center, and various nursing homes are located in Mt. Vernon, and are used by citizens in the Franklin County portion of the Bogata Exchange. In addition, the Church of Christ in Mt. Vernon, the First Baptist Church of Mt. Vernon, and the First Methodist Church serve people within the Bogata Exchange. Students living within the Franklin County portion of the Bogata Exchange attend the Mt. Vernon school district. Citizens in the Bogata Exchange use local doctors, nurses, X-ray and mammography technicians, banking institutions, major businesses, places for employment, firefighters, churches, and merchants in the Mt. Vernon Exchange.

19. Approximately six miles separates the towns of Talco and Bogata. The Bogata and Talco Exchanges share a common independent school district. Two elementary schools are located in the

school district; one of which is in each small town. There is only one high school serving the school district. The Calvary Baptist Church is located in Talco, and many people from the Bogata Exchange attend this church.

20. The Mt. Pleasant Exchange has the Pediatric Clinic and the Titus County Memorial Hospital. These medical facilities provide service to the residents of the Bogata Exchange. Citizens in the Bogata Exchange use local doctors, hospitals, major businesses, places for employment, and merchants in the Clarksville Exchange.

21. The Winnsboro Exchange has medical services, a hospital, and insurance agencies providing services for citizens in the Bogata Exchange. In addition, the AMPI Milk Company employs residents of the Bogata Exchange.

22. The Winfield Exchange has a feed store, truck stop, machine shop, hay dealers, churches, and a small health clinic providing services to citizens in the Bogata Exchange. In addition, Winfield is the home of an office of Texas Utilities Electric Company (TU Electric), which is an employer of residents of the Bogata Exchange.

23. There is a community of interest between the Bogata Exchange and the Clarksville Exchange. The exchanges are contiguous. In addition, the petitioners proved a community of interest with the Clarksville Exchange in the following ways: affirmative vote of the subscribers returning ballots; commonality as a commercial, employment, religious, emergency, and medical center; and commonality of local government.

24. There is a community of interest between the Bogata Exchange and the Talco Exchange. The exchanges are contiguous. In addition, the petitioners proved a community of interest with the Talco Exchange in the following ways: affirmative vote of the subscribers returning ballots; common school districts; and, commonality as a religious center.

25. There is a community of interest between the Bogata Exchange and the Mt. Pleasant Exchange. The exchanges are contiguous. In addition, the petitioners proved a community of interest with the

Mt. Pleasant Exchange in the following ways: affirmative vote of the subscribers returning ballots and commonality as a commercial, employment, and medical center.

26. There is a community of interest between the Bogata Exchange and the Mt. Vernon Exchange. The exchanges are contiguous. In addition, the petitioners proved a community of interest with the Mt. Vernon Exchange in the following ways: affirmative vote of the subscribers returning ballots; commonality as a commercial, employment, religious, emergency, and medical center; commonality of school districts; and commonality of local government

27. There is a community of interest between the Bogata Exchange and the Winnsboro Exchange. The exchanges are within 22 miles of each other. In addition, the petitioners proved a community of interest with the Winnsboro Exchange in the following ways: affirmative vote of the subscribers returning ballots; and commonality as a commercial, employment, and medical provider.

28. There is a community of interest between the Bogata Exchange and the Winfield Exchange. The exchanges are within 22 miles of each other. In addition, the petitioners proved a community of interest with the Winfield Exchange in the following ways: affirmative vote of the subscribers returning ballots; and commonality as a commercial, employment, religious, and medical provider.

29. No issues of law or fact are disputed by any party.

30. No hearing on the merits or Commission action is necessary and administrative review is warranted.

Conclusions of Law

1. The Commission has jurisdiction in this proceeding pursuant to the Public Utility Regulatory Act of 1995, S.B. 319, §§ 1.101, 3.051, 3.151, 3.155, 2.201, 3.251, and 3.304, 74th Leg., R.S. 1995.

2. The standards for community of interest for ELCS in Texas are established in § 3.304(a)(2) of PURA and in P.U.C. SUBST. R. 23.49(c)(3).

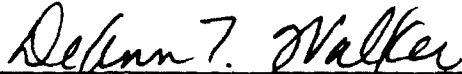
3. Pursuant to P.U.C. SUBST. R. 23.49(c)(11), ELCS petitions filed prior to the adoption of P.U.C. SUBST. R. 23.49(c) must satisfy the criteria contained within the rule.
4. To meet the community of interest standard, P.U.C. SUBST. R. 23.49(c)(3)(B) and § 3.304(a)(2) of PURA require a petitioning exchange to have either a contiguous boundary with the petitioned exchange or require the exchanges covered by the petition to be within a distance of 22 miles of each other. As established in Finding of Fact No. 15, the petitioning exchange satisfies the requirement.
5. P.U.C. SUBST. R. 23.49(c)(3)(C) provides that if the exchanges are greater than 22 miles apart, but less than 50 miles, the petitioners must show a community of interest through schools, hospitals, local governments, business centers, or other relationships so that, without ELCS, a hardship on the residents of the petitioning exchange would occur.
6. An ELCS docket that has the two exchanges within 22 miles of each other or which are contiguous to each other constitutes a *per se* showing of community of interest. Judge Greene requires, however, a greater showing of community of interest in order to grant a waiver of the MFJ; thus, the Commission shall address additional findings of a community of interest between the exchanges in this type of proceeding.
7. A community of interest standard similar to P.U.C. SUBST. R. 23.49(b)(2) is not applicable to proceedings involving ELCS.
8. The standards contained within § 3.304(a)(2) of PURA and P.U.C. SUBST. R. 23.49(c)(3)(B) apply to both contested and uncontested ELCS proceedings.
9. P.U.C. SUBST. R. 23.49(c)(5)(D)(ii) and § 3.304 of PURA require an affirmative vote of at least 70 percent of those subscribers returning ballots to establish a community of interest. The statute and rule do not require an affirmative vote of at least 70 percent of all subscribers in the exchange.

10. This petition does not constitute a major rate proceeding as defined by P.U.C. PROC. R. 22.2.
11. All requirements for administrative review under P.U.C. PROC. R. 22.32(a) have been satisfied; therefore, the proposed petition may be approved by a Hearings Officer under the administrative review provisions of P.U.C. PROC. R. 22.32 as authorized by § 1.101(d) of PURA.

In accordance with the findings of fact and conclusions of law, the Commission issues the following Interim Order:

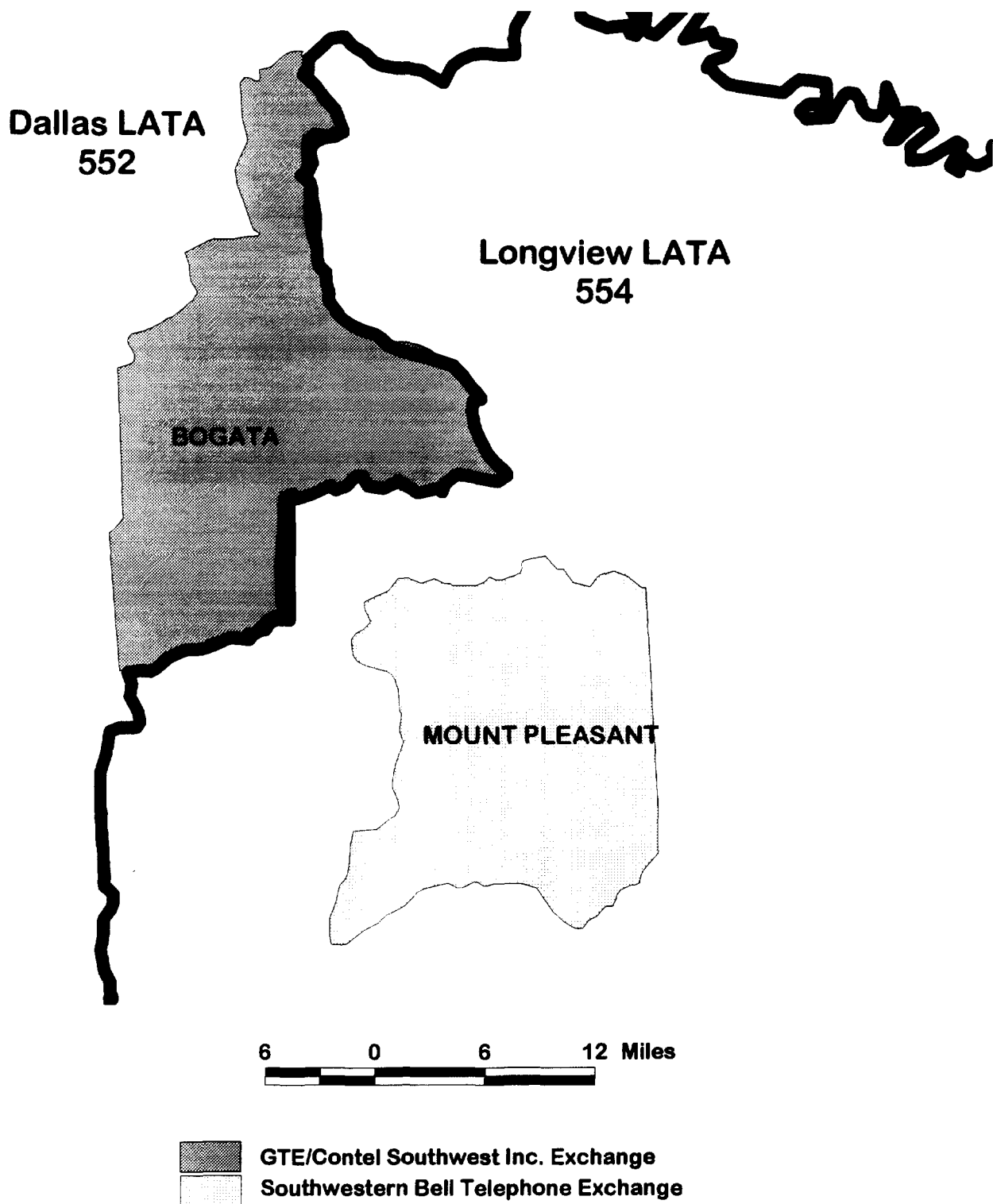
1. The petitioners in the petition filed by the Bogata Exchange for expanded local calling service to the Clarksville, Talco, Mt. Vernon, Winfield, Winnsboro, and Mt. Pleasant Exchanges have shown a community of interest between the exchanges.
2. Within thirty (30) days of this Interim Order, GTE Southwest, Inc. (GTE) and Southwestern Bell Telephone Company (SWB) are **DIRECTED** to file a request for a waiver of the Modified Final Judgment with the Department of Justice or Judge Harold H. Greene, as appropriate.
3. Within thirty (30) days of the receipt of the ruling by Judge Greene, GTE and SWB are **DIRECTED** to file Judge Greene's judgment in this docket.
4. This Interim Order is effective September 15, 1995.

Respectfully submitted,



DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

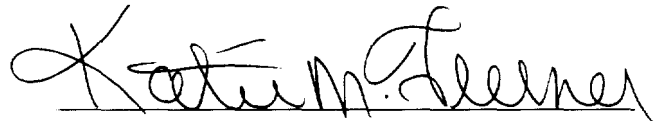
Bogata To Mount Pleasant



This document was produced by the Texas Exchange Carrier Relations organization of Southwestern Bell Telephone Company on 8/7/97, based on the best information it could obtain from other sources at that time. In addition, it is the Telephone Company's understanding that the data underlying the creation of this document may be subject to change. Southwestern Bell makes no representation as to the accuracy of the information provided to it and used to create this document.

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "PETITION OF SOUTHWESTERN BELL TELEPHONE COMPANY" in Docket No. 96-159 has been filed this 29th day of August, 1997 to the Parties of Record.

A handwritten signature in cursive script, reading "Katie M. Turner", written over a horizontal line.

Katie M. Turner

August 29, 1997

Texas Public Utility Commission
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Austin, Texas 78701